

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                               |   |                              |
|-------------------------------|---|------------------------------|
| <b>DARRYL TAMEZ,</b>          | ) |                              |
|                               | ) |                              |
| <b>Plaintiff,</b>             | ) |                              |
|                               | ) |                              |
| <b>v.</b>                     | ) | <b>Case No. CIV-22-540-G</b> |
|                               | ) |                              |
| <b>ABEL GONZALEZ, et al.,</b> | ) |                              |
|                               | ) |                              |
| <b>Defendants.</b>            | ) |                              |

**ORDER**

Plaintiff Darryl Tamez, a state pretrial detainee appearing pro se, filed a Complaint (Doc. No. 1) alleging deprivations of his constitutional rights against multiple defendants. In accordance with 28 U.S.C. § 636(b)(1), the matter was referred to Magistrate Judge Suzanne Mitchell for initial proceedings.

On November 21, 2022, Plaintiff filed a motion titled “Motion for Dismissal Without Prejudice” (Doc. No. 22). In this Motion, Plaintiff requested that this action be dismissed without prejudice due to Plaintiff’s inability to pay his partial initial filing fee of \$61.40. The next day, Judge Mitchell issued a Report and Recommendation (“R. & R.,” Doc. No. 23), recommending that Plaintiff’s Motion be construed as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a) and that the Court dismiss this action without prejudice. *See* R. & R. at 1-2.

Plaintiff then filed a “Motion to Object to Dismissal Without Prejudice” (Doc. No. 25), which the Court construes as an Objection to the R. & R. In his Objection, Plaintiff explains that when he filed the motion to dismiss, he was unaware that the partial filing fee

had already been paid and that he wishes to proceed with this action. *See* Mot. to Obj. (Doc. No. 25) at 1. Based on the representations made in Plaintiff's Objection, which the Court construes as a request to withdraw Plaintiff's "Motion for Dismissal Without Prejudice," the Court will not dismiss this matter at this time.

### CONCLUSION

For the reasons explained above, the Court ADOPTS reasoning of the Report and Recommendation issued November 22, 2022 (Doc. No. 23). Plaintiff's Motion for Dismissal (Doc. No. 22) is hereby DEEMED WITHDRAWN, and the Court declines to dismiss this matter at this time.

This matter is re-referred to Judge Mitchell for further proceedings consistent with the initial case referral.

IT IS SO ORDERED this 29th day of September, 2023.

  
CHARLES B. GOODWIN  
United States District Judge